IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.Rev.Pet.No. 837 of 1998()

CRA.73/1995 of SESSIONS COURT, THRISSUR
ST.928/1991 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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REVN. PETITIONER:

RASHEED,
S/O. ARAKKAVEETTIL ABDULLA,
PALAPPETTIYAVALAVU DESOM,
VALAPPAD VILLAGE, CHAVAKKAD TALUK.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF
POLICE, MATHILAKAM, HEREIN REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P. NO. 4236/1998 IN CRL. R.P. NO. 837/1998

DISMISSED

06.03.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

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CRL. R.P. NO. 837 OF 1998

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Dated this the 6th day of March 2007

O R D E R

The revision petitioner stands convicted for the offence under Sections 279, 337 and 338 of the Indian Penal Code and sentenced to undergo simple imprisonment for 15 days for the offence under section 279 and to undergo simple imprisonment for one month for the offence under section 338 IPC. No separate sentence is awarded for the offence under section 337 IPC. The prosecution case is that on 31.07.1991 at about 7.15 a.m the bus driven by the revision petitioner/accused, that was proceeding from east-west hit on another bus that came from opposite direction alleging that the accident occurred due to the rash and negligent driving of the bus by the accused/revision petitioner. PW7 sustained multiple fractures and PW8 sustained fracture of her nasal bone. The rest of the witnesses have also sustained minor injuries. Both the courts below have held that the accused is guilty of rash and negligent driving.

2. I find that the scene mahazar clearly indicated that the bus driven by the revision petitioner was totally on the wrong side. The contention of the counsel for the revision petitioner that it was a rainy day and that the visibility was poor and both the vehicles has applied brake and that the accident was unavoidable, cannot be sustained in view of the fact that the vehicle was a public career and the revision petitioner ought to have been careful. Had he driven the vehicle in a normal speed in the above conditions the accident could have been averted. The report of the A.M.V.I showed that there was no mechanical defect to the vehicle. In the circumstances, I find no reason to interfere in the findings of the courts below.

3. Considering the fact that the incident had taken place more than 15 years ago and the revision petitioner was facing so far under the ordeal of prosecution and court proceedings, I find that the sentence is liable to be modified. The sentence for the offence under section 338 is modified to imprisonment till rising of the court and to pay a compensation of Rs.10,000/- to PW7

who sustained multiple fractures and in default to undergo simple imprisonment for one month. No separate sentence is awarded for the offences under Section 279 and 337 IPC. The revision petitioner is granted one month's time from today onwards to pay the amount of compensation. The revision petitioner shall appear before Judicial First Class Court, Kodungallur on **30.04.2007** to receive sentence.

The Crl. R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

RV